

CHAPTER 7:24A

1992 DAM RESTORATION AND INLAND WATERS PROJECTS LOAN PROGRAM

Authority

**N.J.S.A. 13:1 D-9; N.J.S.A. 58:4-1 et seq. and
Green Acres, Clean Water, Farmland and Historic Preservation
Bond Act of 1992, P.L. 1992 c.88**

**Effective Date: February 25, 2000, Readoption
March 20, 2000, Amendments
Expiration Date: February 25, 2005**

CHAPTER 24A
DAM RESTORATION AND INLAND WATERS LOAN PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:24A-1.1 Scope and construction

(a) The following constitute the rules governing loans to assist local government units, private lake associations or similar organizations, and owners of private dams for dam restoration and inland waters projects pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992 c.88. These rules prescribe the procedures, minimum standards for the conduct of borrowers, and standards for obtaining loans.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the Act.

7:24A-1.2 Purposes

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992 c.88;

2. To establish policies and procedures for the administration of funds appropriated pursuant to the Act for the purpose of making loans for dam restoration and inland waters projects;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To ensure that the distribution and use of funds is consistent with the laws and policies of the State of New Jersey;

5. To establish minimum standards of conduct to prevent conflicts of interest and ensure proper administration of loans;

6. To establish accounting procedures for the administration of loans.

7:24A-1.3 Project eligibility

(a) Any local government unit with a proposed dam restoration or inland waters project as defined in N.J.A.C. 7:24A-1.7 is eligible to apply for a loan under this chapter. Any private lake association or similar

organization or any owner of a private dam with a proposed project is eligible to apply for a loan as a co-applicant with a local government unit.

(b) To be eligible for a loan in any loan period a proposed dam restoration or inland waters project, as defined in N.J.A.C. 7:24A-1.7, must satisfy the following criteria:

1. The proposed design of a dam restoration project must meet all requirements of the Dam Safety Standards, N.J.A.C. 7:20, including the development of an Operation and Maintenance Manual and Emergency Action Plan. The Operation and Maintenance Manual and Emergency Action Plan are not required to be completed at the time of application but must be completed as a condition of the loan award agreement.

2. A dredging or lake restoration project at a site where the dam impounding the lake is not in compliance with the Dam Safety Standards, N.J.A.C. 7:20, shall not be eligible unless the Department has awarded a loan for dam restoration pursuant to this chapter or the applicant provides with its application proof of other funding dedicated to the necessary dam repairs;

3. The project shall be an independent and complete project;

4. The project shall not be excessively expensive; and

5. The project shall not conflict with any other State projects.

7:24A-1.4 Project phases

(a) The application phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-application conference;
2. Application submittal;
3. Review of application;
4. Priority ranking of project; and
5. Notice of qualification.

(b) The development phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-loan conference;

2. Submittal and review of the materials required under N.J.A.C. 7:24A-3.2; and

3. Preparation and execution of the loan award agreement.

(c) The implementation phase of a dam restoration or inland waters project shall consist of the completion of the project in accordance with the terms of the loan award agreement and the requirements of this chapter.

7:24A-1.5 Legislative appropriations

Funding of loans shall be conditioned upon the appropriation by the legislature of funds from the 1992 Dam Restoration and Clean Water Trust Fund pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and subsequent bond acts.

7:24A-1.6 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules shall not be affected thereby.

7:24A-1.7 Definitions

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

"Act" means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992 c.88, and any subsequent bond acts and legislative appropriations made for the purposes provided in this chapter.

"Administrator" means the Section Chief of the Dam Safety Section of the Department or other person designated by the Commissioner to carry out the functions of the Administrator.

"Allowable project costs" means the costs which are determined by the Department under the Act and this chapter to be eligible for a dam restoration or inland waters project loan.

"Applicant" means any local government unit that applies independently, or a private lake association or similar organization or private dam owner who has a local government unit as a co-applicant, for a loan pursuant to the provisions of this chapter.

"Bonds" means the bonds authorized under the Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992, P.L. 1992 c.88, and subsequent bond acts.

"Borrower" means an applicant who has been awarded a loan pursuant to the Act and this chapter, and who has executed a loan award agreement.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designated representative.

"Construction" means, in addition to the usual meaning thereof, acts of construction, reconstruction, replacement, and improvement, and includes the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34-1.

"Dam restoration project" means the demolition, reconstruction, rehabilitation, or restoration of a dam that impounds water for water supply, flood control or recreation purposes.

"Department" means the New Jersey Department of Environmental Protection.

"Flood control facility" means any dam, basin, dike, channelization or other measure which provides a flood control benefit to a documented flood-prone, previously developed area.

"Flood control project" means the construction, reconstruction, rehabilitation, or restoration of a flood control facility.

"Fund" means the 1992 Dam Restoration and Clean Water Trust Fund established pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88.

"Height of dam" means the vertical dimension from the lowest point in the streambed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

"High hazard dam" means a dam, the failure of which may cause the probable loss of life or extensive property damage, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Inland waters" means any lake, river, pond, stream, marsh, or freshwater wetland; any floodway, flood fringe area, or flood hazard area as defined in N.J.S.A. 58:16A-51 or as delineated by the Department pursuant to N.J.S.A. 58:16A-52; and any area delineated by or for the Federal government which, if appropriately regulated by a local government unit, qualifies the residents therein for Federal flood insurance.

"Inland waters project" means any flood control project, pollution control project, or recreation and conservation project as defined in this chapter.

"Loan" means a loan awarded pursuant to the Act and this chapter.

"Local government unit" means a county or a municipality, or any agency, authority, board, commission, or other instrumentality thereof; or any two or more counties or municipalities operating jointly through a joint meeting or interlocal services agreement, permitted by law, or any agency, authority, board, commission, or other instrumentality thereof; or any other local or regional entity created by the legislature as a political subdivision of the State, or any agency, authority, board, commission, or other instrumentality thereof.

"Low hazard dam" means a dam, the failure of which would result in the loss of the dam itself but little or no additional damage to other property, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Pollution control facility" means any water conveyance or containment facility (basin, well, swale or other practice acceptable to the Department), proposed or existing, which contributes to the abatement of pollution from stormwater runoff, soil erosion, or other nonpoint sources in previously developed areas.

"Pollution control project" means the construction, reconstruction, rehabilitation, or restoration of a water pollution control facility.

"Project costs" means the applicant's expenses incurred in connection with all things deemed by the Department to be necessary or useful and convenient for completion of a project; the execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with any project authorized by the Act; the procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of the Act.

"Recreation and conservation project" means the construction, rehabilitation, or restoration of a facility, lake or stream to improve the overall quality of inland waters, including the dredging of lakes, cleaning of streams, construction of water quality related facilities to enhance recreational fishing and wildlife preserves, or other practices acceptable to the Department.

"Significant hazard dam" means a dam, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

SUBCHAPTER 2 PROJECT APPLICATION PHASE

7:24A-2.1 Pre-application procedures

(a) Each applicant shall request a pre-application conference prior to making a formal application for a loan. During the conference, the Department shall identify and explain all loan application procedures and requirements. The Department shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. Neither written nor oral statements made during the pre-application conference shall bind the Department. The Department may waive the pre-application conference at its discretion.

(b) Questions concerning the dam restoration and inland waters projects loan program and requests for a pre-application conference may be directed to:

Department of Environmental Protection
Dam Safety Section
PO Box 419
Trenton, NJ 08625
(609) 984-0859

7:24A-2.2 Application procedures

(a) To apply for a dam restoration or inland waters project loan, the applicant shall submit the following:

1. Completed loan application on the form available from the Department which shall include, but not be limited to, the information specified in (a)2 through (a)13 below.

2. Description of the applicant's plans to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan;

3. Evidence that all Federal, State, regional and local agencies with jurisdiction over the project have been notified of the project, including, but not limited to, the appropriate municipal planning board and environmental commission and county planning board and environmental commission;

4. Evidence that all required permits have been obtained or that steps have been taken to initiate the

permit review process for the required permits in order to demonstrate that the requirements of N.J.A.C. 7:24A-3.2(c) can be met;

5. An explanation of the need for the project and a discussion of alternatives to the proposed project;

6 A statement explaining how the loan will accomplish the goal set out in the application;

7. A proposed construction schedule for the project;

8 Details of proposed financial arrangements for construction of the project;

9. All other forms, supplementary materials, agreements and subagreements which the Department may require as determined in the pre-application conference required pursuant to N.J.A.C. 7:24A-2.1 (a).

10. An estimate of construction costs by unit price for the project. Estimated costs for labor, equipment, materials, supplies, overhead and contractors' and consultants' profit margins with supporting background and summary sheets as may be requested by the Department to substantiate the estimate of unit costs. Total project costs and those project costs that the applicant anticipates will be allowable project costs must be separately summarized;

11. A brief description of the environmental impact of the proposed project, including the environmental impact of the proposed project on water quality, plant and animal life, project site land characteristics, historical sites and other pertinent environmental factors;

12. Proof of the applicant's ownership of the real property on which the project is located, or the capability (right or eminent domain, conditional contract for property acquisition, easement or property owner's permission) to use that property for undertaking the project; and

13. All documentation and other information as the Department may require to adequately determine the applicant's priority point total pursuant to N.J.A.C. 7:24A-5.1.

(b) The application shall be signed by a person authorized by written resolution or ordinance of a local government unit to file an application for a loan under this chapter or to apply as a co-applicant with a private lake association or similar organization or private dam owner, to represent the local government unit in all matters relating to the application process, and to obligate the local government unit to the terms and conditions of a loan award

agreement. A copy of the resolution or ordinance shall accompany the application.

(c) The application of a private lake association or similar incorporated organization shall be signed by a person authorized by written resolution of the association's or organization's board of directors or governing body to file an application for a loan under this chapter, to represent the private lake association or similar organization in all matters relating to the application process, and to obligate the private lake association or similar organization to the terms and conditions of a loan award agreement. A copy of the resolution shall accompany the application, along with the resolution required pursuant to (b) above.

(d) An application shall be submitted prior to the application closing date for the application period in which the applicant wishes to be awarded a loan. No application will be accepted after the close of business on the application closing date.

1. The initial application period and application closing date will be established subsequent to the adoption of this chapter. A notice of the details of the application period will be published in the New Jersey Register.

2. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(e) Applications shall be sent to:

Department of Environmental Protection
Dam Safety Section
PO Box 419
Trenton, NJ 08625

7:24A-2.3 Allowable project costs

(a) Project costs shall be allowed to the extent permitted under this chapter and the loan award agreement. Allowable project costs shall be those costs set forth below:

1. For a dam restoration project:

(i) All items deemed by the Department to be necessary or useful and convenient in connection with a dam restoration project;

(ii) Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with a dam restoration project;

(iii) Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

(iv) Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

2. For an inland waters project:

(i) All items deemed by the Department to be necessary or useful and convenient in connection with an inland waters project;

(ii) Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with an inland waters project;

(iii) Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

(iv) Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

3. The project costs set forth below shall not be allowable:

(i) Project design and development costs incurred in preparing necessary documentation for the application phase of this loan program;

(ii) Any costs associated with a project for which construction commenced prior to the filing of a loan application with the Department;

(iii) Any items deemed by the Department to be unnecessary or not useful and convenient for the project; and

(iv) Any costs funded by any Federal or other State grant or loan to the applicant; and

(v) Any costs not listed in a(1) or a(2) above.

7:24A-2.4 Use and disclosure of information

Any loan application, pre-application, or other submittal, when received by the Department, constitutes a public record. The Department shall make such records available to persons who request them to the extent allowed by State and Federal law.

7:24A-2.5 Application review

(a) The Department shall review each application according to the following protocol:

1. Administrative review to determine the completeness of the application;
2. Project, technical, scientific and environmental review to determine the merit and relevance of the project to the Department's program objectives;
3. Budget review to determine whether proposed project costs are allowable, reasonable, and applicable; and
4. Eligibility determination.

7:24A-2.6 Approval or disapproval of application

(a) Upon completion of its review of an application, the Department shall take one of the following actions:

1. Request additional information to complete the application;
2. Approve the application for priority ranking and possible loan; or
3. Disapprove the application.

(b) The Department shall promptly notify the applicant in writing of any disapproval and provide the reasons for such disapproval. A disapproval of an application shall not preclude its reconsideration during a subsequent application period if revised and resubmitted by the applicant.

7:24A-2.7 Notice of qualification

(a) The Department shall send a notice of qualification to an applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 and ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan. An applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 but not ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan shall be so notified by the Department.

(b) Any applicant who receives a notice of qualification but who decides not to proceed with a project shall so notify the Department within 30 days of the date of the notice.

(c) The Department shall award a loan to any applicant who receives a notice of qualification subject to available appropriations, execution of a loan award agreement and submittal of required permits and materials, prepared to the satisfaction of the Department, within six months after the Department issues the notice of qualification or within any extension of the period for such submittals granted pursuant to N.J.A.C. 7:24A-3.2(c).

(d) An applicant with a project on a priority list who is not awarded a loan in any application period may reapply for a position on any subsequent priority list for a subsequent application period by timely filing a new loan application form and by updating the other application documents required under N.J.A.C. 7:24A-2.2. The re-application will be treated as a new application for a loan and will be evaluated in accordance with the requirements of this chapter.

SUBCHAPTER 3. PROJECT DEVELOPMENT PHASE

7:24A-3.1 Pre-loan conference

(a) Each applicant who receives a notice of qualification shall arrange to have a pre-loan conference within 30 days from the date of the notice of qualification and shall submit all materials required pursuant to N.J.A.C. 7:24A-3.2(a) to the Department within six months after the date of the notice of qualification or within any extension of the period for materials submittal granted pursuant to N.J.A.C. 7:24A-3.2(c).

(b) During the pre-loan conference the Department shall identify and explain the submittals required before a loan award agreement can be executed.

7:24A-3.2 Required submittals prior to execution of a loan award agreement

(a) An applicant who receives a notice of qualification shall submit the following materials prepared in accordance with accepted engineering practices, within the time period specified in N.J.A.C. 7:24A-3.1(a):

1. A complete engineer's report prepared, signed and sealed by a New Jersey-licensed professional engineer experienced in hydrologic, hydraulic, structural and geotechnical engineering. The report shall include, but is not limited to, the engineering assumptions, references, calculations and conclusions relative to the structural,

hydrologic and hydraulic design of all elements within the project scope, as well as all information, narrative, data, and computations necessary to support and describe the design developed in such detail as to permit complete understanding of the project design.

2. Plans for the loan project prepared by a New Jersey-licensed professional engineer. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (U.S.G.S.) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features.

3. Construction specifications, including but not limited to:

i. General provisions, specifying the rights, duties, and responsibilities of the applicant, engineer and builder, and the prescribed order of work;

ii. Technical provisions, describing in detail the work methods, equipment, and materials to be used, the results to be obtained and the project and payment schedule; and

iii. All other provisions, submissions and certifications deemed necessary by the Department;

4. Detailed cost estimate of expenses for the project. The breakdown of the cost estimates shall be by unit price covering estimated labor, equipment, materials, supplies and contractor's overhead and profit. A summary form showing item number, description, estimated quantity, unit, unit price, and estimated amount is required.

5. Description of the applicant's plan to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan.

(b) The Department reserves the right to waive any of the submission requirements of (a) above if it determines that the submission of such information is not required or necessary in order for the Department to enter into a loan award agreement with the applicant.

(c) An applicant who receives a notice of qualification shall obtain all necessary Federal, State and local permits and approvals within six months of the date of the notice of qualification. Failure to obtain the required

permits within the required time period shall disqualify the project for a loan for that application period unless prior written approval for an extension has been granted by the Department.

1. The Department will extend the time for submission of the required materials and/or permits for up to three months if the applicant provides written justification of the need for such extension to the satisfaction of the Department. The applicant must submit such written justification to the Department no later than 30 days before the expiration of the specified six-month period.

2. The Department will grant an additional extension for the submission of the required permits and/or materials if the applicant demonstrates to the satisfaction of the Department that the permits are delayed through no fault of the applicant.

7:24A-3.3 Execution of a loan award agreement

(a) The Department shall prepare and transmit duplicate copies of the loan award agreement to the applicant.

1. The applicant shall execute such duplicate copies of the loan award agreement and return them within 30 calendar days after the date of the Department's transmittal letter. The Department may, in its discretion, extend the time for execution. The loan award agreement of a local government unit applicant shall be signed by a person authorized by written resolution or ordinance to obligate the applicant to the terms and conditions of the loan award agreement. The loan award agreement shall be signed by, or on behalf of, each co-applicant, if any.

2. The loan award agreement shall set forth the terms and conditions of the loan, including an estimated loan repayment schedule, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The loan award agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department during the application phase of the project.

4. After the Department has executed the loan award agreement, it shall transmit a copy of the executed loan award agreement to the applicant, and co-applicant, if any.

5. The Department shall not execute the loan award agreement if the applicant is in default on any State loan.

(b) The loan award shall become effective upon execution of a loan award agreement by the Department and the applicant, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award agreement.

(c) The loan award shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project. Cost overruns for any project or portion thereof are solely the responsibility of the borrower.

SUBCHAPTER 4. PROJECT IMPLEMENTATION PHASE

7:24A-4.1 Amount and terms of loan

(a) The amount of the loan, determined by the Department, shall be based upon allowable project costs as set forth in this chapter.

(b) The interest rate for loans made pursuant to the Act from the 1992 Dam Restoration and Clean Water Trust Fund shall not exceed two percent per year.

(c) The loan maturity period shall be for a period not to exceed 20 years from the date that disbursements to the borrower begin. The Department and borrower may establish a shorter repayment schedule by mutual agreement. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) The cost of payment of the principal and interest of any loan made to a private lake association or similar organization or owner of a private dam, as a co-applicant with a local government unit, shall be assessed by the local government unit against the real estate benefited thereby in proportion to and not in excess of the benefits conferred. Such assessments shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality where they are imposed. From the date of confirmation, the assessments shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner as assessments for local improvements.

(e) A local government unit may be required to secure a loan awarded under this chapter in a manner acceptable to the Department. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance and surety bonds.

(f) An estimated amortization or loan repayment schedule will be provided to the borrower by the Department and be made part of the loan award agreement. The schedule

will indicate installment dates and loan repayment amounts. The Department reserves the right to unilaterally adjust the loan repayment dates and amounts on the amortization schedule if the timetable for completion and the actual project costs and disbursements vary from the estimated amortization schedule.

(g) The loan shall be repaid in semi-annual installments over a period which will not exceed twenty years from the date of the first drawdown to the date of the borrower's final repayment.

(h) Interest shall accrue on the amount of loan funds disbursed from the Fund at a rate of two percent per year, computed from the date of disbursement to the date of the final repayment of principal. Interest accrued against each interim drawdown, from the date of the first drawdown to a date three months following the last project drawdown, must be paid to the Treasurer of the State of New Jersey three months after the date of the final drawdown.

(i) The first principal repayment will be made to the Treasurer of the State beginning nine months after the final project drawdown, or two years from the date of the first disbursement, or as per a schedule prescribed by the loan award agreement, whichever comes first.

(j) The borrower shall allocate a portion of its budget in an amount sufficient to meet the annual debt service on the loan. Repayment funds must be deposited into a fund specifically established for the purpose of assuring repayment of the loan to the Treasurer of the State.

(k) The borrower's failure to make any repayment within 30 days of the scheduled payment due date will result in the Department's assessing a late fee. The late fee is computed on the following basis:

1. When a payment is 30 days past due, the late fee shall be five percent of the payment amount due.

2. When a payment is 60 days past due, the late fee shall be 10 percent of the payment amount due.

3. When a payment is 90 days past due, the late fee shall be 15 percent of the payment amount due, and the borrower will be in default of the loan award agreement. Upon default, all outstanding principal, interest, and penalty amounts immediately become payable to the Treasurer of the State.

4. On a loan in default, interest charges at a rate of two percent accrue on the outstanding principal, interest, and penalty charges calculated from the date the repayment was due.

7:24A-4.2 Loan conditions

(a) The following requirements, in addition to the requirements of such other statutes, rules, terms and conditions as may be applicable to a particular loan, are conditions of each loan and conditions precedent to each disbursement under a loan award agreement:

1. No disbursement shall be made under a loan award agreement until a specific appropriation therefor has been made by the Legislature.

2. The borrower shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the loan award agreement.

3. The borrower shall certify that the borrower and its contractors and subcontractors shall comply with all insurance requirements of the loan award agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The borrower shall include the State and its agencies, employees and officers as additional named insureds on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The borrower shall provide the Department with a copy of the certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to proceeding with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional named insureds through the completion of construction. The borrower shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation.

4. The borrower shall certify that the borrower and its contractors and subcontractors maintain their financial records in accordance with N.J.A.C. 7:24A-4.20.

5. The borrower shall certify that the borrower and its contractors and subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules promulgated pursuant thereto.

6. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. The performance bond or performance guarantee shall remain in effect until the Department conducts its final inspection of the project and states in writing to the applicant that the project is satisfactorily completed.

ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements.

7. The borrower shall certify that the borrower is in compliance with all other requirements and conditions of the loan award agreement.

8. Bid specifications shall require that project elements which constitute unallowable project costs be bid as line items in the total bid specifications separate from project elements which constitute allowable project costs.

9. Bid specifications shall require that each general contractor who bids on the project shall identify in the bid submission to the borrower the principal subcontractors.

10. Before the borrower makes any final award of a construction contract, the borrower shall submit to the Department for review and approval the final construction contract, with work specifications detailing any changes made since submittal of the materials required during the project development phase pursuant to N.J.A.C. 7:24A-3.

11. Concurrent with the submittal to the Department required under 10 above, the borrower shall provide the Department with a tabulation of bids received and identify the general contractor to be awarded the construction contract for the project. In the event a contract is not proposed to be awarded to the contractor who has submitted the lowest bid, the borrower shall provide adequate justification for said award.

12. The Department reserves the right to require the borrower to readvertise the bid specifications for the project if the Department deems the certifications required in 13 below unsatisfactory .

13. The borrower shall certify the following to the Department before the borrower awards any contract on a bid.

i. The borrower is in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34;

ii. All contracts for the project will be awarded to the qualified, responsible and responsive bidder who submits the lowest acceptable bid; and

iii. The bid prices included in the bid specifications are reasonably balanced.

14. The borrower shall insert in all contracts or subcontracts that the borrower awards pursuant to this chapter the Department's subcontractor certification form as included in the loan award agreement.

15. The borrower shall submit one copy of the executed construction contract and subcontracts and associated documents to the Department within 10 days of their execution.

7:24A-4.3 Formal amendments to loan award agreement

(a) A formal amendment means any written alteration of any term or condition, budget or project scope or construction method or other administrative, technical or financial provision of the loan award agreement.

(b) A formal amendment shall not increase the loan amount. Any increased costs resulting from a formal amendment pursuant to (a) above shall be the sole responsibility of the borrower.

(c) The borrower shall promptly notify the Administrator in writing (certified mail, return receipt requested) of any event or proposed project change which may require a formal amendment, including but not limited to:

1. Rebudgeting;
2. Any changes in approved technical plans or specifications for a project;
3. Any changes in the approved scope or objective of a project;
4. Any significant, changed conditions at the project site;
5. Any delay in the time for the completion of the project or any major phase thereof;
6. Any changes which may increase or substantially decrease the total cost of a project; and
7. Any changes in personnel identified in the loan award agreement or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department determines that a formal amendment to the loan award agreement is necessary, it shall notify the borrower and prepare the formal amendment. If

the Department determines that a formal amendment is not necessary, N.J.A.C. 7:24A-4.4 or 7:24A-4.5 shall apply.

7:24A-4.4 Other changes to loan award agreement

If the Department determines that a proposed project change does not require a formal amendment to the loan award agreement, the Administrator shall provide the borrower with written approval of such a change.

7:24A-4.5 Modification of administrative provisions

The Department may effect a modification of an administrative provision of the loan award agreement by notifying the borrower by letter (certified mail, return receipt requested). Such a modification of an administrative provision may include a change in the designation of key Department personnel, a change in address to which a report is to be transmitted by the borrower, or a change in the payment schedule.

7:24A-4.6 Loan disbursements

(a) Loan disbursements shall be made only to the local government unit as sole borrower or as co-borrower, unless otherwise indicated in the loan award agreement.

(b) Funds shall be released to the borrower upon completion of the entire project to the satisfaction of the Department, or on an interim basis. If interim disbursements are made, each will be equal to the loan amount corresponding to the percentage of the total project completed. Two percent of each disbursement shall be withheld until the whole project has been completed to the satisfaction of the Department. No disbursement shall be made until the Department receives the necessary information to document project cost. The information shall include all forms and documentation required by the Department as specified in the loan award agreement.

7:24A-4.7 Unused loan funds

Unused loan funds for a project for which actual allowed implementation costs are less than the amount appropriated for the loan shall be retained by the State and deposited in the Fund to be applied to other dam restoration and inland waters projects, as appropriate, pursuant to the Act and this chapter.

7:24A-4.8 Assignment

The right to receive disbursements from the State pursuant to a loan award agreement under this chapter shall not be assigned.

7:24A-4.9 Publicity and signs

(a) Any press release or other public dissemination of information by the borrower concerning the project shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblems of the State and the Department, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:24A-4.10 Access

(a) The borrower and its contractors and subcontractors shall allow Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

1. Each contract executed by the borrower and its contractors and subcontractors shall contain provisions allowing for such access to any facilities, premises and records related to the project.

2. The borrower shall submit to the Department any documents and information related to the project as requested by the Department.

7:24A-4.11 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan and shall award contracts and subcontracts pursuant to the loan award agreement, free from bribery, graft, and other corrupt practices. The borrower bears primary responsibility for prevention and detection, and shall cooperate in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Administrator immediately after such allegation or evidence comes to its attention, and shall periodically advise the Administrator of the status and ultimate disposition of such matter.

7:24A-4.12 Debarment

(a) No borrower shall enter into a contract for work on a project with any person debarred, suspended or

disqualified from contracting with the Department pursuant to N.J.A.C. 7:1-5.

(b) Each borrower shall insert in every contract for work on a project a clause that states that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Each borrower shall prepare bid specifications which require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's list of debarred, suspended and disqualified bidders. Bid specifications prepared by the borrower shall also state that the borrower will immediately notify the Department whenever a bidder is on the Treasurer's list. The Department reserves the right, in such circumstances, to immediately suspend such bidder from Department contracting, and to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account, in determining whether such bidder is the lowest responsible bidder pursuant to law, the loss of Department loan funds under these rules which would result from awarding a contract to such bidder. The borrower may advise prospective bidders that the procedures of (c) above and (e) below will be followed.

(e) Any person included on the Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a state agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this chapter may submit information to the Department to demonstrate why this section should not apply to such person. If the Commissioner determines that contracting with such a bidder is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may make an exception from the application of this section with respect to a particular bidder pursuant to N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:24A-4.13 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of a borrower's, contractor's or subcontractor's noncompliance with any requirement of this chapter, or term or condition of the loan award agreement, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14;
2. Withhold loan funds pursuant to N.J.A.C. 7:24A-4.15;
3. Order stoppage of the project work pursuant to N.J.A.C. 7:24A-4.16; or
4. Terminate or annul a loan pursuant to N.J.A.C. 7:24A-4.17 or 7:24A-4.18, respectively.

7:24A-4.14 Notice of noncompliance

When the Department determines that a borrower is not in compliance with any requirement of this chapter or with any term or condition of the loan award agreement it shall notify the borrower in writing (certified mail, return receipt requested or hand delivery) of the noncompliance. The Department may require the borrower, its engineer and/or contractor to take and complete corrective action within 10 working days of the date of delivery of a notice of noncompliance. If the borrower, its engineer and/or contractor do not take corrective action or if such corrective action is not adequate in the judgment of the Department, then the Department may withhold payment or issue a stop work order pursuant to N.J.A.C. 7:24A-4.15 or 4.16.

7:24A-4.15 Withholding of funds

The Department may withhold a loan disbursement or any portion thereof when it determines and provides notification in writing that a borrower has failed to comply with any provision of this chapter, or any term or condition of the loan award agreement.

7:24A-4.16 Stop work order

(a) The Department may order that work on a project be stopped for good cause. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms of the loan award agreement or where the Department determines it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) A stop work order shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;

3. Instructions as to the issuance of further orders by the borrower for materials or services;

4. Instructions as to action to be taken by the borrower on subagreements;

5. Other suggestions to the borrower for minimizing costs; and

6. A notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested), require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any extension of such period to which the parties may agree.

(d) Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the stoppage period or within any extension of such period to which the parties agree, the Department shall either:

1. Rescind the stop work order, in full or in part;
2. Terminate the work covered by such order; or
3. Authorize resumption of work.

(e) If a stop work order is rescinded or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. The Department may, in its discretion, make an equitable adjustment to the loan period, the project, or both, and shall amend the loan award agreement in accordance with N.J.A.C. 7:24A-4.3 or make other changes in accordance with N.J.A.C. 7:24A-4.4.

7:24A-4.17 Termination of loan

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms and conditions of the loan.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to terminate a loan in whole or in part at least 10

days prior to the proposed date of termination, which notice shall state the reasons for the proposed termination.

(b) If a borrower completely or partially terminates the project for which a loan has been awarded, the borrower shall promptly give written notice to the Administrator. The Department may enter into a loan termination agreement or unilaterally terminate the loan, effective as of the date that the borrower terminated work on the project. The Department may also annul the loan pursuant to N.J.A.C. 7:24A-4.18.

(c) The Department and borrower may enter into a loan termination agreement at any time, on terms consistent with the requirements of this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination of a loan, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocable to the terminated portion of the project, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination of the loan and as may be otherwise allowable as determined by the Department.

1. Upon receipt of written notice of the Department's intent to terminate the loan, the borrower shall make no new financial commitments of loan funds without Department approval.

2. Upon receipt of written notice of the Department's intent to terminate the loan the borrower shall reduce the amount of outstanding commitments of loan funds insofar as possible and report to the Administrator the uncommitted balance of loan funds.

7:24A-4.18 Annulment of loan

(a) The Department may, in writing, annul the loan if it determines that:

1. Without good cause, the borrower has not substantially completed the project;

2. The borrower obtained the loan by fraud; or

3. The borrower has committed corrupt practices in administering the project.

(b) The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to annul the loan at least 10 days prior to the

intended date of annulment. Upon annulment of the loan, the borrower shall return all loan funds disbursed to it. The Department shall make no further disbursements to the borrower.

(c) The Department may pursue such other remedies as may be available under Federal, State and local law.

7:24A-4.19 Adjudicatory hearings

(a) The Administrator shall decide any dispute arising under a loan upon written request by the borrower. The borrower must specify in detail the basis of the dispute and the relief sought. The Administrator will reduce the decision to writing and send a copy to the borrower.

(b) Within 20 days of receipt of the Administrator's decision, a borrower may submit a written request for an adjudicatory hearing to contest the Administrator's decision. The hearing request shall be submitted to the Department at the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

(c) The borrower shall include the following information in a request for an adjudicatory hearing:

1. Location of the project;
2. A copy of the Administrator's decision and the loan award agreement;
3. The legal and factual questions at issue; and
4. Documents and other information supporting the request.

(d) Following receipt of a timely and complete hearing request, the Department may attempt to settle the dispute through whatever proceedings, meetings and conferences that the Department deems appropriate.

(e) If efforts at settlement fail, the Department shall decide whether to grant the hearing request. A granted hearing request shall be transmitted to the Office of Administrative Law and conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(f) The Department, if it denies a hearing request, shall briefly state the reasons for the denial. A denial shall be considered a final agency action.

7:24A-4.20 Accounting procedures, financial records and auditing requirements

(a) The borrower's accounting system must be adequate to identify all costs associated with the project.

(b) The borrower must maintain records, books, documentation, and other evidence and appropriate accounting procedures and practices to reflect:

1. The total cost of the project, including all eligible costs;

2. The amount, date of receipt, and disposition of all assistance received for the project, including both Department loan assistance and any other grants, contributions, gifts, or donations; and

3. In the case of more than one loan, separate records must be maintained for each project;

(c) All financial records of the borrower and of its contractors and subcontractors shall conform to generally accepted accounting principles.

(d) The Department, or its duly authorized representative or representatives, shall have access to all records, books, documents and papers pertaining to the loan award agreement and/or the approved project for audit, examination, excerpt and transcription purposes. All records shall be maintained and made available to the Department during the performance of the approved project and for three years after the date of final disbursement by the Department or the date of audit resolution, whichever is later. The borrower shall reference N.J.A.C. 7:24A-4.20(d) in all project-related contracts.

(e) The borrower shall conduct annual audits in conformance with the federal Single Audit Act of 1984, P.L. 98-502, Federal OMB Circular A-128, "Audits of State and Local Governments," and State OMB Circular 87-11, "Single Audit Policy," incorporated herein by reference. The documents may be obtained from the Department.

(f) Each audit report must document the borrower's compliance with the material terms and conditions of the loan award agreement and applicable laws and regulations.

(g) Each audit report shall contain an itemized schedule of all of the borrower's State grant and other financial assistance that identifies grantor agency, program

title, State account number, total amount of assistance, and total disbursement to date.

(h) The Department may adjust the borrower's account or final disbursement, if necessary, upon the Department's completion of its review of the annual audit reports.

SUBCHAPTER 5. PRIORITY RANKING OF PROJECTS

7:24A-5.1 Criteria for priority determination

(a) The Department shall assign priority points in accordance with the provisions set forth in (b) below to each project for which an application has been approved pursuant to N.J.A.C. 7:24A-2.6.

(b) Priority points shall be assigned according to the following protocol:

1. Priority points shall be assigned according to the project type.

i. 100 points shall be assigned for a dam restoration project for a high hazard dam.

ii. 75 points shall be assigned for a flood control project or a dam restoration project for a significant hazard dam.

iii. 50 points shall be assigned for a pollution control project or a dam restoration project for a low hazard dam.

iv. 25 points shall be assigned for a recreation and conservation project.

2. For dams, priority points shall be assigned according to the volume of water stored behind the dam at normal pool elevation.

i. One point shall be assigned for storage volumes of less than 75 acre-feet.

ii. Three points shall be assigned for storage volumes of 75 acre-feet or greater, but less than 200 acre feet.

iii. Six points shall be assigned for storage volumes of 200 acre-feet or greater, but less than 500 acre-feet.

iv. Nine points shall be assigned for storage volumes of 500 acre-feet or greater.

3. For dams, priority points shall be assigned according to the height of the dam.

i. One point shall be assigned for a height of less than 10 feet.

ii. Three points shall be assigned for a height of 10 feet or greater, but less than 20 feet.

iii. Six points shall be assigned for a height of 20 feet or greater, but less than 40 feet.

iv. Nine points shall be assigned for a height of 40 feet or greater.

4. For dams, priority points shall be assigned according to the findings contained in the U.S. Army Corps of Engineers Phase 1 Inspection Report.

i. Zero points shall be assigned for a green-covered report or if no report was prepared.

ii. Three points shall be assigned for a yellow-covered report.

iii. Six points shall be assigned for a white-covered report.

iv. Nine points shall be assigned for a red-covered report.

5. For dams, priority points shall be assigned according to the surface area of water at normal pool created by the dam.

i. One point shall be assigned for a surface area of less than 20 acres.

ii. Three points shall be assigned for a surface area of 20 acres or greater, but less than 50 acres.

iii. Six points shall be assigned for a surface area of 50 acres or greater, but less than 150 acres.

iv. Nine points shall be assigned for a surface area of 150 acres or greater.

6. For dams, priority points shall be assigned according to the use of the dam. A particular dam may be assigned points for more than one use.

i. One point shall be assigned if the impoundment created by the dam is used for recreation.

ii. Two points shall be assigned if the dam is used as a municipal roadway for public use.

iii. Three points shall be assigned if the dam is used as a county roadway for public use.

iv. Four points shall be assigned if the dam's primary design purpose is for flood control.

v. Six points shall be assigned if the water stored behind the dam is used as a potable water supply.

7. For flood control projects, priority points shall be assigned according to the extent the project protects homes.

i. Three points shall be assigned for a project that protects one to five homes.

ii. Five points shall be assigned for a project that protects six to 10 homes.

iii. Seven points shall be assigned for a project that protects 11 to 20 homes.

iv. Nine points shall be assigned for a project that protects 21 or more homes.

8. For flood control projects, priority points shall be assigned according to the extent the project protects commercial businesses.

i. Three points shall be assigned for a project that protects one or two businesses.

ii. Five points shall be assigned for a project that protects three or four businesses.

iii. Seven points shall be assigned for a project that protects five to 10 businesses.

iv. Nine points shall be assigned for a project that protects 11 or more businesses.

9. For flood control projects, priority points shall be assigned according to the extent the project protects industrial facilities.

i. Three points shall be assigned for a project that protects facilities which employ up to 50 people.

ii. Five points shall be assigned for a project that protects facilities which employ 51 to 100 people.

iii. Seven points shall be assigned for a project that protects facilities which employ 101 to 200 people.

iv. Nine points shall be assigned for a project that protects facilities which employ 201 or more people.

10. For flood control projects, priority points shall be assigned according to the extent the project protects agricultural land.

i. Three points shall be assigned for a project that protects less than 100 acres.

ii. Five points shall be assigned for a project that protects 100 acres or more, but less than 200 acres.

iii. Seven points shall be assigned for a project that protects 200 acres or more, but less than 300 acres.

iv. Nine points shall be assigned for a project that protects 300 acres or more.

11. For pollution control projects, priority points shall be assigned according to the extent the project addresses the water quality of stormwater runoff from the area affected by the project.

i. One point shall be assigned for a project that addresses water quality for an area covering less than five acres.

ii. Three points shall be assigned for a project that addresses water quality for an area covering five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that addresses water quality for an area covering 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that addresses water quality for an area covering 20 acres or more.

12. For pollution control projects, priority points shall be assigned according to the extent the project protects against permanent soil erosion.

i. One point shall be assigned for a project that protects less than five acres.

ii. Three points shall be assigned for a project that protects five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that protects 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that protects 20 acres or more.

13. Pollution control projects not assigned points under 11 and 12 above will be assigned points only pursuant to liii above.

14. For recreation and conservation projects, priority points shall be assigned according to area of the lake dredged.

i. One point shall be assigned for dredging less than 20 acres.

ii. Three points shall be assigned for dredging 20 acres or more, but less than 50 acres.

iii. Five points shall be assigned for dredging 50 acres or more, but less than 150 acres.

iv. Seven points shall be assigned for dredging 150 acres or more.

15. For recreation and conservation projects, priority points shall be assigned according to the length of the stretch of stream cleaned.

i. One point shall be assigned for a project that cleans less than 0.25 miles of stream.

ii. Three points shall be assigned for a project that cleans 0.25 miles or more, but less than 0.5 miles of stream.

iii. Five points shall be assigned for a project that cleans 0.5 miles or more, but less than 1.0 miles of stream.

iv. Seven points shall be assigned for a project that cleans 1.0 miles of stream or more.

16. For recreation and conservation projects, priority points shall be assigned for projects which provide fish passage.

i. Five points shall be assigned for a project that provides fish passage located on the existing obstruction furthest downstream.

ii. Three points shall be assigned for a project that provides fish passage on an existing structure

which blocks the passage of migratory fish and is not the furthest downstream.

17. Recreation and conservation projects not assigned points under 14, 15, and 16 above will be assigned points only pursuant to 1 iv above .

(c) The Department shall determine the total number of priority points assigned to each project under (b) above.

(d) The Department shall rank the projects on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

(e) The Department may, when two or more projects are assigned the same total number of priority points, take geographical distribution of projects into consideration when assigning rank to obtain greater geographical distribution.

(f) The Department shall establish and maintain a separate priority list for each application period.